
OLR Bill Analysis

sSB 1019 (File 444, as amended by Senate "A" and "B")*

AN ACT CONCERNING ADMINISTRATIVE STREAMLINING AT THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION.

SUMMARY:

This bill expands the scope of the law governing radiation and radioactive material. It allows the Department of Energy and Environmental Protection (DEEP) commissioner to (1) issue, modify, or revoke orders to correct violations of these laws and specifies notice, hearing, and appeal requirements and (2) issue cease and desist orders and suspend registrations. The bill broadens his ability to seek an injunction. It establishes penalties for certain violations and false statements.

The bill makes other changes in the environmental laws. It:

1. allows the public notice of certain notices of tentative determination to be posted on DEEP's website, instead of in newspapers;
2. allows, rather than requires, the DEEP commissioner to establish lines to restrict activity along certain tidal or inland waterways or flood-prone areas without authorization, and revokes any order establishing such lines;
3. eliminates the requirement that the DEEP commissioner annually submit an inventory of known contaminated wells and leaking underground storage tanks to the Environment Committee; and
4. repeals the Mid-Atlantic States Air Pollution Control Compact.

The bill eliminates two DEEP reporting requirements on (1)

emissions reductions from the state's motor vehicle emissions inspections program and (2) air quality.

It also makes technical and conforming changes.

*Senate Amendment "A" revokes any order of the DEEP commissioner establishing stream channel encroachment lines on or before October 1, 2013.

*Senate Amendment "B" removes the provision that eliminated the requirement for the commissioner to prepare, annually amend, and make publicly available a list of certain inland wetlands general permit holders.

EFFECTIVE DATE: October 1, 2013, except the provisions removing the emissions and air quality report requirements takes effect July 1, 2013.

§§ 4-7 & 11-13 — RADIATION AND RADIOACTIVE MATERIALS

Prohibited Acts

The law prohibits anyone from using, manufacturing, producing, transporting, transferring, receiving, acquiring, owning, or possessing any ionizing radiation source (e.g., an x-ray machine) unless exempt, licensed, or registered. The bill makes a minor change to specify that registration is pursuant to the radiation and radioactive material laws.

Eliminated Hearing Requirement

The bill removes a requirement that the DEEP commissioner hold a hearing, subject to judicial review, at the request of anyone whose interests may be affected, in proceedings for (1) issuing or modifying rules and regulations on control of ionizing radiation sources; (2) granting, suspending, revoking, or amending a license; and (3) determining compliance with, or granting exceptions from, DEEP rules and regulations.

Orders to Abate or Correct Violations, Service, and Hearing Procedure

The bill authorizes the DEEP commissioner to issue, modify, or

revoke any order to correct or abate violations of certain provisions of the radiation and radioactive material law and any regulation or license issued under them. The order may include necessary remedial measures.

The bill requires any such order to be served by (1) certified mail, return receipt requested; (2) a state marshal; or (3) an indifferent person. If a state marshal or indifferent person serves the order, the original, with an endorsed return of service, must be filed with the commissioner. The order is deemed issued upon service or deposit in the mail. Any order must state why it was issued and specify a reasonable time for compliance.

An issued order is final unless a person aggrieved by it files a written request for a hearing within 30 days after its issuance. The commissioner must then hold a hearing as soon as practicable. After the hearing, the commissioner must consider all the evidence and may affirm, modify, or revoke his order. He must notify the order recipient of his decision by certified mail, return receipt requested. The commissioner may extend the time for complying with an order if he believes it advisable or necessary. A modification or extension is a revision of an existing order and not a new order. There can be no hearing or appeal from it.

The bill allows anyone aggrieved by the commissioner's final order to appeal to New Britain Superior Court.

Cease and Desist Orders and Registration Revocation or Suspension

The bill also allows the DEEP commissioner to (1) issue a cease and desist order for certain violations of the radiation and radioactive material law and (2) upon a showing of cause and, after a hearing, suspend or revoke a registration.

By law, the commissioner can issue a cease and desist order when he finds that a person is causing, engaging in, maintaining, or about to cause, engage in, or maintain, a condition or activity that is likely to or will result in imminent and substantial damage to the environment or

public health (CGS § 22a-7). The law requires a person receiving such an order to immediately comply with it. A hearing must be held within 10 days of the order's receipt. The law subjects violators of such an order to a civil fine of up to \$25,000 for each day a violation continues (CGS § 22a-6b).

Attorney General's Authority

The bill expands the DEEP commissioner's authority to seek an injunction.

Under current law, when he believes anyone has engaged in or is about to engage in an act or practice that violates certain laws, rules, regulations, or orders pertaining to radioactive material or radiation sources, he may ask the attorney general to seek an order (1) enjoining the act or practice or (2) directing compliance with the law, rule, regulation, or order. The court may issue a permanent or temporary injunction, restraining order, or other appropriate order.

The bill repeals this provision and replaces it with a broader one that covers any act, practice, or omission that violates the radiation and radioactive material laws, including the registration requirements not covered by current law, and any regulation or order issued under these laws. It specifies that the attorney general bring the action for injunctive relief in New Britain Superior Court. It also allows any court order to require remedial measures. The bill requires that such actions take precedence over other actions in the order of trial.

Penalties for Criminally Negligent Violation

The bill subjects anyone who, with criminal negligence, violates these laws, regulations, orders, or licenses to a penalty of up to \$25,000 for each day of violation, up to one year in prison, or both. A subsequent conviction is punishable by a fine of up to \$50,000 for each day of violation, up to two years in prison, or both.

By law, a person acts with "criminal negligence" with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that the

result will occur or that the circumstance exists. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation (CGS § 53a-3).

The law already subjects anyone who fails to file a registration to a civil fine of up to \$1,000 for each violation and an additional \$100 for each day a violation continues (CGS § 22a-6b).

Penalties for False Statements

The bill subjects anyone who, with criminal negligence, makes a false statement, representation, or certification in any application, registration, notification, or other document filed or required to be maintained, to a penalty of up to \$25,000 for each day of violation, up to one year in prison, or both. A subsequent conviction is punishable by a fine of up to \$50,000 for each day of violation, up to two years in prison, or both.

It subjects anyone who knowingly makes a false statement, representation, or certification in any application, registration, notification, or other document filed or required to be maintained, to a penalty of up to \$50,000 for each day of violation, up to three years in prison, or both. A subsequent conviction is punishable by a fine of up to \$50,000 for each day of violation, up to 10 years in prison, or both.

The law prohibits anyone from intentionally making a false written statement, under oath or on a form with a notice that a false statement is punishable, if he or she (1) does not believe the statement is true and (2) intends to mislead a public servant. A violation is a class A misdemeanor, punishable by a fine of up to \$2,000, up to one year in prison, or both (CGS § 53a-157b).

§ 2 — PUBLIC NOTICE

The bill allows the DEEP commissioner to provide the public notice for any notice of tentative determination (DEEP's recommended action) for a permit that requires newspaper publication on DEEP's website. He may do so if the (1) public notice is posted on the website

during the entire public notice period and (2) date, time, and nature of opportunity for public participation is published at the same time in an advertisement in a newspaper with general circulation in the affected area. (The bill does not specify how often the newspaper advertisement must be published. Presumably, it would run once.) The advertisement must be at least 1/16 of a page and include the website address where the public notice details can be learned.

§§ 1 & 14 — STREAM CHANNEL ENCROACHMENT LINES

The bill allows, rather than requires, the DEEP commissioner to establish along certain tidal or inland waterways or flood-prone areas, boundary lines beyond which no one may place an encroachment, hindrance, or obstruction without authorization. By law, these lines must be established by order of the commissioner. The bill specifies that any such order establishing these lines on or before October 1, 2013 is deemed revoked.

The law requires the commissioner to evaluate whether to issue or deny a permit to place an encroachment, hindrance, or obstruction beyond these lines based on the activity's impact on flood-carrying and water storage capacity of the waterways and flood plains, hazards to life and property, and flood levels, among other things. By eliminating the established lines and making the commissioner's authority to establish such lines permissive rather than mandatory, the bill eliminates the current related permitting program.

§§ 8 & 9 — REPORTING REQUIREMENTS

Emissions Inspection Program

The bill eliminates two reports the DEEP commissioner must make to the Transportation Committee related to the Department of Motor Vehicles' motor vehicle emissions inspection program. It removes a quarterly report on emissions reductions resulting from the program and an annual report on air quality in Connecticut.

Contaminated Wells and Leaking Underground Storage Tank Inventory

By law, the DEEP commissioner must compile an inventory of

known contaminated wells and leaking underground storage tanks. The bill removes a requirement that he annually submit the inventory to the Environment Committee.

§ 13 — AIR POLLUTION CONTROL COMPACT

The bill repeals the Mid-Atlantic States Air Pollution Control Compact, an interstate compact authorized in 1967 to create a commission for addressing interstate air pollution problems. The compact was not implemented.

BACKGROUND

Radioactive Material and Ionizing Radiation

By law, “radioactive materials” include any solid, liquid, or gas that spontaneously emits ionizing radiation. “Ionizing radiation” includes gamma rays, x-rays, alpha and beta particles, neutrons, protons, high-speed electrons, and other atomic or nuclear particles, but not sound, radio, or light waves.

Federal Nuclear Regulation

Under federal law, the U.S. Nuclear Regulatory Commission is responsible for regulating nuclear power plants; uses of nuclear material, such as in nuclear medicine; and nuclear waste.

Legislative History

The House rejected Senate Amendment “C” (LCO 6838) which requires DEEP and the departments of Economic and Community Development and Public Health to jointly establish procedures to abate the fine or penalty assessed on a business for a first time violation of a noncriminal regulation if remedial action is taken within 30 days of the assessment.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 28 Nay 0 (03/25/2013)

Judiciary Committee

Joint Favorable

Yea 40 Nay 2 (05/01/2013)